

Proposed technical correction:

**SECTION #.**(a) G.S. 24-10 reads as rewritten:

**"§ 24-10. Maximum fees on loans secured by real property.**

(a) ~~No lender on loans made under G.S. 24-1.1 shall charge or receive from any borrower or any agent for a borrower, any fees or discounts unless otherwise allowed where the principal amount is less than three hundred thousand dollars (\$300,000) and is secured by real property, which fees or discounts in the aggregate shall exceed two percent (2%) if a construction loan on other than a one or two family dwelling, and one percent (1%) on any other type of loan; provided, however, Unless otherwise allowed by statute, rule, or ordinance, no lender on a loan made under G.S. 24-1.1 that has a principal amount less than three hundred thousand dollars (\$300,000) and is secured by real property shall charge or receive from a borrower or an agent of a borrower any fees or discounts that in the aggregate exceed the following:~~



(1) Two percent (2%) of the principal amount for a construction loan on other than a one or two family dwelling.

(2) One percent (1%) of the principal amount for any other type of loan.

However, if a single lender makes both the construction loan and a permanent loan utilizing one note, the lender may collect the fees as if they were two separate loans. Except as provided herein or otherwise allowed, in this section or otherwise allowed by statute, rule, or ordinance, no party shall pay for the benefit of the lender any other fees or discounts.

(b) Any loan made under G.S. 24-1.1 in an original principal amount of one hundred thousand dollars (\$100,000.00) or less may be prepaid in part or in full, after 30 ~~days~~ days' notice to the lender, with a maximum prepayment fee of two percent (2%) of the outstanding balance at any time within three years after the first payment of principal and thereafter there shall be no prepayment fee, ~~provided that there fee. There shall be no prepayment fee charged or received in connection with any repayment of a construction loan; and except as herein provided, loan. Except as provided in this section, any lender and any borrower may agree on any terms as to prepayment of a loan.~~

(c) "Construction loan" means a loan which is obtained for the purpose of financing fully, or in part, the cost of constructing buildings or other improvements upon real property and the proceeds of which, under the terms of a written contract between a lender and a borrower, are to be disbursed periodically as ~~such the construction work progresses; and such progresses. A construction loan shall be payable in full not later than 18 months in case of a loan made under the provisions of G.S. 24-1.1(1) G.S. 24-1.1(a)(1) or 36 months in case of any other construction loan made after the execution of the note by the borrower. A construction loan may include advances for the purchase price of the property upon which such the improvements are to be constructed.~~

(d) (1) Any lender may charge to any person, ~~firm~~ firm, or corporation that assumes a loan, secured by real property, the following fee:

a. Where the mortgage or deed of trust contains a due on sale clause, a fee not to exceed four hundred dollars ~~(\$400.00); provided, however, that if (\$400.00). However, if~~ the original obligor is not released from liability on the obligation, the fee shall not exceed one hundred twenty-five dollars (\$125.00).

b. Where the mortgage or deed of trust does not contain a due on sale clause, a fee not to exceed one hundred twenty-five dollars (\$125.00).

~~The fees authorized by this subsection may be paid in whole or in part by any party but the total shall not exceed the maximum fees set forth herein.~~

- (2) For purposes of this subsection, the term "due on sale clause" means a contract provision that authorizes a lender to declare immediately due and payable all sums secured by the lender's security instrument if all or any part of the secured property, or an interest therein, is sold or transferred without the lender's prior written consent or contrary to the requirements of the mortgage or the deed of trust. For purposes of this subsection, no lender shall exercise its rights under the due on sale clause if prohibited by federal law as of the date of execution of the contract containing the clause.

The fees authorized by this subsection may be paid in whole or in part by any party but the total shall not exceed the maximum fees set forth in this section.

(e), (f) Repealed by Session Laws 1985, c. 755, s. 2.

(g) Notwithstanding the limitations contained in subsection (a) of this section, a lender described in G.S. 24-1.1A(a)(2) may charge or receive from ~~any borrower or any agent for a borrower, fees a borrower or an agent of a borrower fees~~ or discounts ~~which that~~ in the aggregate do not exceed two percent (2%) on of the principal amount for loans made under G.S. 24-1.1 ~~or G.S. 24-1.2(2)~~ when such ~~the~~ loans are secured by a second or junior lien on real property. The fees or discounts are fully earned when the loan is made and are not a prepayment penalty under this Chapter or any other law of this State.

(h) A bank, savings and loan association, savings bank, or credit union, or any subsidiary or affiliate thereof organized under the laws of this State or the United States, ~~States~~ may charge a party to a loan secured by real property a reasonable fee as may be agreed upon by the parties for an appraisal performed by an employee of the bank, savings and loan association, savings bank, or credit union, or any subsidiary or affiliate thereof. Upon the request of the borrower, the lender shall provide at no additional charge to the borrower a copy of any appraisal for which the lender has collected a fee under this subsection. Provision of the copy of an appraisal shall not be construed to create or imply any warranty which does not otherwise exist by the lender as to the accuracy of the appraisal." (1967, c. 852, s. 1; 1969, c. 40; c. 1303, s. 6; 1971, c. 1168; 1979, c. 684; c. 849, s. 1; c. 969; 1981, c. 933; 1983, c. 541, s. 1; 1985, c. 154, s. 2; c. 755, s. 2; 1991, c. 506, s. 5.)

**SECTION #.(b)** G.S. 24-1.1 reads as rewritten:

**"§ 24-1.1. Contract rates and fees.**

(a) Except as otherwise provided in this Chapter or other applicable law, the parties to a loan, purchase money loan, advance, commitment for a ~~loan loan, or forbearance forbearance,~~ other than a credit card, ~~open-end, open-end loan, whether or not secured by real property,~~ or similar ~~loan loan,~~ may contract in writing for the payment of interest not in excess ~~of: of the~~ the following:

- (1) Where the principal amount is twenty-five thousand dollars (\$25,000) or less, the rate set under subsection (c) of this ~~section; or section.~~
- (2) Any rate agreed upon by the parties where the principal amount is more than twenty-five thousand dollars (\$25,000).

(b) As used in this section, interest shall not be deemed in excess of the rates provided where interest is computed monthly on the outstanding principal balance and is collected not more than 31 days in advance of its due date. Nothing in this section ~~shall be construed to authorize~~ authorizes the charging of interest on committed funds prior to the disbursement of ~~said the~~ funds.

(c) On the fifteenth day of each month, the Commissioner of Banks shall announce and publish the maximum rate of interest permitted by subdivision (1) of subsection (a) of this section

on that date. ~~Such~~ The rate shall be the latest published noncompetitive rate for U.S. Treasury bills with a six-month maturity as of the fifteenth day of the month plus six percent (6%), rounded upward or downward, as the case may be, to the nearest one-half of one percent (1/2 of 1%) or sixteen percent (16%), whichever is greater. If there is no nearest one-half of one percent (1/2 of 1%), the Commissioner shall round downward to the lower one-half of one percent (1/2 of 1%). The rate so announced shall be the maximum rate permitted for the term of loans made under this section during the following calendar month when the parties to ~~such the~~ loans have agreed that the rate of interest to be charged by the lender and paid by the borrower shall not vary or be adjusted during the term of the loan. The parties to a loan made under this section may agree to a rate of interest ~~which that~~ shall vary or be adjusted during the term of the loan in which case the maximum rate of interest permitted on ~~such the~~ loans during a month during the term of the loan shall be the greater of the rate announced by the Commissioner in (i) the preceding calendar month or (ii) the calendar month preceding that in which the rate is varied or adjusted.

(d) Any bank or savings institution organized under the law of North Carolina or of the United States may charge a party to a loan or extension of credit governed by this section a fee for the modification, renewal, extension, or amendment of any terms of the loan or extension of credit, ~~such fee not to credit. The fee shall not exceed~~ the greater of one-quarter of one percent (1/4 of 1%) of the balance outstanding at the time of the modification, renewal, extension, or amendment of terms, or fifty dollars (\$50.00).

(e) Any bank or savings institution organized under the law of North Carolina or of the United States may charge a party to a loan or extension of credit not secured by real property governed by this section an origination fee not to exceed the greater of one-quarter of one percent (1/4 of 1%) of the outstanding balance or fifty dollars (\$50.00).

(f) This section ~~shall not be construed to~~ does not limit fees on loans or extensions of credit in excess of three hundred thousand dollars (\$300,000)." (1969, c. 1303, s. 1; 1977, c. 778, ss. 1, 3; c. 779, s. 1; 1979, c. 138, s. 1; 1981, c. 465, s. 1; c. 934, s. 1; 1985, c. 663, s. 1; 1991, c. 506, s. 2; 1998-119, s. 1; 1999-75, s. 1.)

**SECTION #.**(c) G.S. 53-141 reads as rewritten:

**"§ 53-141. Powers.**

Industrial banks shall have perpetual duration and succession in their corporate name unless a limited period of duration is stated in their certificate of incorporation. They shall have the powers conferred by subdivisions (1), (2), and (3) of subsection (a) of G.S. 55-3-02, and subdivision (3) of G.S. 53-43, such additional powers as may be necessary or incidental for the carrying out of their corporate purposes, and in addition thereto the following powers:

- (1) To discount and negotiate promissory notes, drafts, bills of exchange and other evidences of indebtedness, and to loan money on real or personal security, and to purchase notes, bills of exchange, acceptances or other choses in action, and to take and receive interest or discounts subject to G.S. 53-43(1).
- (2) To make loans and charge and receive interest at rates not exceeding the rates of interest provided in ~~G.S. 24-1.1 and G.S. 24-1.2.~~ G.S. 24-1.1.
- (3) To establish branch offices or places of business within the county in which its principal office is located, and elsewhere in the State, after having first obtained the written approval of the Commissioner of Banks, which approval may be given or withheld by the Commissioner of Banks in his discretion. The Commissioner of Banks, in exercising such discretion, shall take into account, but not by way of limitation, such factors as the financial history and condition

of the applicant bank, the adequacy of its capital structure, its future earnings prospects, and the general character of its management. Such approval shall not be given until he shall find

- a. That the establishment of such branch or limited service facility will meet the needs and promote the convenience of the community to be served by the bank, and
- b. That the probable volume of business and reasonable public demand in such community are sufficient to assure and maintain the solvency of said branch or limited service facility and of the existing bank or banks in said community.

Provided, that the Commissioner of Banks shall not authorize the establishment of any branch the paid-in capital of whose parent bank is not sufficient in amount to provide for capital in an amount equal to that required with respect to the establishment of branches of commercial banks under the provisions of G.S. 53-62. For the purposes of this paragraph, the provisions of G.S. 53-62 as to the meaning of the word "capital" shall be applicable.

A bank may discontinue a branch office upon resolution of its board of directors. Upon the adoption of such a resolution, the bank shall follow the procedures for closing a branch as set forth at G.S. 53-62(e). No branch shall be closed until approved by the Commissioner of Banks.

- (4) Subject to the approval of the Commissioner of Banks and on the authority of its board of directors, or a majority thereof, to enter into such contract, incur such obligations and generally to do and perform any and all such acts and things whatsoever as may be necessary or appropriate in order to take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights or privileges, which may at any time be available or inure to banking institutions, or to their depositors, creditors, stockholders, conservators, receivers or liquidators, by virtue of those provisions of section eight of the Federal Banking Act of 1933 (section twelve B of the Federal Reserve Act as amended) which establish the Federal Deposit Insurance Corporation and provide for the insurance of deposits, or of any other provisions of that or any other act or resolution of Congress to aid, regulate or safeguard banking institutions and their depositors, including any amendments of the same or any substitutions therefor; also, to subscribe for and acquire any stock, debentures, bonds or other types of securities of the Federal Deposit Insurance Corporation and to comply with the lawful regulations and requirements from time to time issued or made by such corporations.
- (5) To solicit, receive and accept money or its equivalent on deposit both in savings accounts and upon certificates of deposit.
- (6) Subject to the approval of the State Banking Commission, to solicit, receive and accept money or its equivalent on deposit subject to check; provided, however, no such approval shall be given unless and until such industrial bank meets the capital requirements of a commercial bank as set forth in G.S. 53-2.
- (7) To transact any lawful business in aid of the United States in time of war or engagement of the Armed Forces of the United States in hostile military operations." (1923, c. 225, s. 6; C.S., s. 225(f); 1925, c. 199, s. 1; 1931, c. 243,

s. 5; 1935, c. 81, s. 2; 1939, c. 244, ss. 1, 2; 1943, c. 233; 1945, c. 283; 1949, c. 952, ss. 1, 2; 1959, c. 365; 1967, c. 789, s. 19; 1969, c. 1303, ss. 10-12; 1995, c. 129, s. 26; 1995 (Reg. Sess., 1996), c. 742, s. 20; 2011-183, s. 41.)

Explanation: This proposed technical correction makes three primary changes (which are starred) in addition to cleaning up legalese:

(1) Session Laws 1991, c. 506, s. 2, added a subsection (a) designation to G.S. 24-1.1, causing G.S. 24-1.1(1) to become G.S. 24-1.1(a)(1). However, Section 5 of the session law failed to make a conforming change in G.S. 24-10(c). This proposed technical correction makes the necessary conforming change.

(2) S.L. 1998-119, s. 2, repealed G.S. 24-1.2, which provided maximum interest rates on certain installment loans, and did not enact a successor provision. This proposed technical correction deletes a reference to the repealed statute in G.S. 24-10(g) and G.S. 53-141(2).

(3) G.S. 24-10 also contains percentages that do not refer to an underlying amount. This proposed technical correction adds the phrase "of the principal amount" in three places to remove this ambiguity. "Principal amount" is the correct term because G.S. 24-10 is limited to loans governed by G.S. 24-1.1, which do not include open-end loans (e.g., equity lines of credit). *Compare* G.S. 24-1.1(a) *with* G.S. 24-1.2A (governing equity lines of credit). This proposed technical correction clarifies that G.S. 24-1.1 does not include open-end loans, whether or not secured by real property.

Please note that there is a companion proposed technical correction that cleans up G.S. 53-141.

Session law excerpts:

GENERAL ASSEMBLY OF NORTH CAROLINA  
1991 SESSION

CHAPTER 506  
HOUSE BILL 869


AN ACT TO INCREASE EXEMPT PROPERTY VALUES AND CLARIFY THE EFFECT OF EXEMPTIONS, TO AUTHORIZE CERTAIN LOAN AND APPRAISAL FEES, TO AMEND THE USURY LAWS APPLICABLE TO COMMERCIAL LOANS, TO AUTHORIZE THE IMPOSITION OF AN ANNUAL FEE OR MONTHLY SERVICE CHARGE ON CREDIT PLANS, AND TO AMEND THE LAW REGARDING ASSUMPTION FEES IN CONNECTION WITH CERTAIN REAL ESTATE LOANS.

The General Assembly of North Carolina enacts:

...

Sec. 2. G.S. 24-1.1 reads as rewritten:

**"§ 24-1.1. Contract rates and fees.**

 (a) Except as otherwise provided in this Chapter or other applicable law, the parties to a loan, purchase money loan, advance, commitment for a loan or forbearance other than a credit card, open-end, or similar loan may contract in writing for the payment of interest not in excess of:

- (1) Where the principal amount is twenty-five thousand dollars (\$25,000) or less, the rate set under ~~subdivision (3)~~ subsection (c) of this section; or
- (2) Any rate agreed upon by the parties where the principal amount is more than twenty-five thousand dollars (\$25,000).

(b) As used in this section, interest shall not be deemed in excess of the rates provided where interest is computed monthly on the outstanding principal balance and is collected not more than 31 days in advance of its due date. Nothing in this section shall be construed to authorize the charging of interest on committed funds prior to the disbursement of said funds.

~~(3)~~(c) On the fifteenth day of each month, the Commissioner of Banks shall announce and publish the maximum rate of interest permitted by subdivision (1) of this section on that date. Such rate shall be the latest published ~~non-competitive~~ noncompetitive rate for U.S. Treasury bills with a six-month maturity as of the fifteenth day of the month plus six percent (6%), rounded upward or downward, as the case may be, to the nearest one-half of one percent (1/2 of 1%) or sixteen percent (16%), whichever is greater. If there is no nearest one-half of one percent (1/2 of 1%), the Commissioner shall round downward to the lower one-half of one percent (1/2 of 1%). The rate so announced shall be the maximum rate permitted for the term of loans made under this section during the following calendar month when the parties to such loans have agreed that the rate of interest to be charged by the lender and paid by the borrower shall not vary or be adjusted during the term of the loan. The parties to a loan made under this section may agree to a rate of interest which shall vary or be adjusted during the term of the loan in which case the maximum rate of interest permitted on such loans during a month during the term of the loan shall be the rate announced by the Commissioner in the preceding calendar month.

(d) Any lender may charge a party to a loan or extension of credit governed by this section a fee for the modification, renewal, extension, or amendment of any terms of the loan or extension of credit, such fee not to exceed the greater of one-quarter of one percent (1/4 of 1%) of the balance outstanding at the time of the modification, renewal, extension, or amendment of terms, or fifty dollars (\$50.00).

(e) Any lender may charge a party to a loan or extension of credit not secured by real property governed by this section an origination fee not to exceed the greater of one-quarter of one percent (1/4 of 1%) of the outstanding balance or fifty dollars (\$50.00).

(f) This section shall not be construed to limit fees on loans or extensions of credit in excess of three hundred thousand dollars (\$300,000)."

...

Sec. 5. G.S. 24-10 reads as rewritten:

**"§ 24-10. Maximum fees on loans secured by real property.**

(a) No lender on loans made under G.S. 24-1.1 shall charge or receive from any borrower or any agent for a borrower, any fees or discounts unless otherwise allowed where the principal amount is less than three hundred thousand dollars (\$300,000) and is secured by real property, which fees or discounts in the aggregate shall exceed two percent (2%) if a construction loan on other than a one or two family dwelling, and one percent (1%) on any other type of loan; provided, however, if a single lender makes both the construction loan and a permanent loan utilizing one note, the lender may collect the fees as if they were two separate loans. Except as provided herein or otherwise allowed, no party shall pay for the benefit of the lender any other fees or discounts.

(b) Any loan made under G.S. 24-1.1 in an original principal amount of one hundred thousand dollars (\$100,000.00) or less may be prepaid in part or in full, after 30 days notice to the lender, with a maximum prepayment fee of two percent (2%) of the outstanding balance at any

time within three years after the first payment of principal and thereafter there shall be no prepayment fee, provided that there shall be no prepayment fee charged or received in connection with any repayment of a construction loan; and except as herein provided, any lender and any borrower may agree on any terms as to prepayment of a loan.

(c) 'Construction loan' means a loan which is obtained for the purpose of financing fully, or in part, the cost of constructing buildings or other improvements upon real property and the proceeds of which, under the terms of a written contract between a lender and a borrower, are to be disbursed periodically as such construction work progresses; and such loan shall be payable in full not later than 18 months in case of a loan made under the provisions of G.S. 24-1.1(1) or 36 months in case of any other construction loan made after the execution of the note by the borrower. A construction loan may include advances for the purchase price of the property upon which such improvements are to be constructed.

(d) (1) Any lender may charge to any person, ~~persons~~, firm or corporation that assumes a loan, ~~made under the provisions of G.S. 24-1.1 and secured by real property, a fee not to exceed one hundred seventy five dollars (\$175.00); provided, however, that if the original obligor is not released from liability on the obligation, the fee shall not exceed one hundred dollars (\$100.00).~~ property, the following fee:

- a. Where the mortgage or deed of trust contains a due on sale clause, a fee not to exceed four hundred dollars (\$400.00); provided, however, that if the original obligor is not released from liability on the obligation, the fee shall not exceed one hundred twenty-five dollars (\$125.00).
- b. Where the mortgage or deed of trust does not contain a due on sale clause, a fee not to exceed one hundred twenty-five dollars (\$125.00).

The fees authorized by this subsection may be paid in whole or in part by any party but the total shall not exceed the maximum fees set forth herein.

(2) For purposes of this subsection, the term 'due on sale clause' means a contract provision that authorizes a lender to declare immediately due and payable all sums secured by the lender's security instrument if all or any part of the secured property, or an interest therein, is sold or transferred without the lender's prior written consent or contrary to the requirements of the mortgage or the deed of trust. For purposes of this subsection, no lender shall exercise its rights under the due on sale clause if prohibited by federal law as of the date of execution of the contract containing the clause.

(e),(f) Repealed by Session Laws 1985, c. 755, s. 2, effective July 15, 1985.

(g) Notwithstanding the limitations contained in subsection (a) of this section, a lender described in G.S. 24-1.1A(a)(2) may charge or receive from any borrower or any agent for a borrower, fees or discounts which in the aggregate do not exceed two percent (2%) on loans made under G.S. 24-1.1 or G.S. 24-1.2(2) when such loans are secured by a second or junior lien on real property. The fees or discounts are fully earned when the loan is made and are not a prepayment penalty under this Chapter or any other law of this State.

(h) A bank, savings and loan association, savings bank, or credit union, or any subsidiary or affiliate thereof organized under the laws of this State or the United States, may charge a party to a loan secured by real property a reasonable fee as may be agreed upon by the parties for an appraisal performed by an employee of the bank, savings and loan association, savings bank, or credit union, or any subsidiary or affiliate thereof. Upon the request of the borrower, the lender

shall provide at no additional charge to the borrower a copy of any appraisal for which the lender has collected a fee under this subsection. Provision of the copy of an appraisal shall not be construed to create or imply any warranty which does not otherwise exist by the lender as to the accuracy of the appraisal."

...

Sec. 8. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

James C. Gardner  
President of the Senate

Daniel Blue, Jr.  
Speaker of the House of Representatives

G.S. 24-1.2A:

**§ 24-1.2A. Equity lines of credit.**

(a) Notwithstanding any other provision of this Chapter, the parties to an equity line of credit, as defined in G.S. 45-81, may contract in writing for interest at rates which shall not exceed the maximum rates permitted under G.S. 24-1.1(c); provided, however, that the parties may contract for interest rates which shall be adjustable or variable, so long as for adjustable or variable rate contracts the rate in effect for a given period does not exceed the maximum rate permitted under G.S. 24-1.1(c) for the same period.

(b) Fees may be charged on equity lines of credit which in the aggregate, over the life of the contract based on the maximum limit of the line of credit, do not exceed those permitted under G.S. 24-10. Any lender may charge a party to a loan or extension of credit governed by this section a fee for the modification, renewal, extension, or amendment of any terms of the loan or extension of credit, such fee not to exceed the greater of one-quarter of one percent (1/4 of 1%) of the balance outstanding at the time of the modification, renewal, extension, or amendment of terms, or fifty dollars (\$50.00). (1985, c. 207, s. 1; 1991, c. 506, s. 4; 1998-119, s. 2.1.)